

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re: Edward H. Okun Internal Revenue
Service Tax Deferred Exchange Litigation,

NO. M 09-02028 JW

Anita Hunter v. Edward Okun, et al.,

Member Cases:
C 07-02795 JW
C 09-01688 JW
C 09-02079 JW

Anita Hunter, et al. v. Citibank, N.A., et al.,

WAVE I JUDGMENT

Quirk Infiniti, Inc. v. Wachovia Bank, N.A.

Related Actions.

Pursuant to the Wave I Final Approval Order of this Court dated October 7, 2009, a
Judgment is hereby entered with respect to the “Wave I Settling Defendants” who are:

1. Kluger Peretz Kaplan & Berlin (“KPKB”);
2. Continental Casualty Company and Continental Insurance Company (“CNA”);
3. Federal Insurance Company (“Federal”);
4. Twin City Fire Insurance Company (“Twin City”);
5. Those Certain Interested Underwriters at Lloyd’s of London Subscribing to Policy
Numbers 0706-00061771C, 0706-00067331B, 0707-00067302C, 0707-00066896C and 0707-
00071264C;
6. Daniel E. McCabe, Shirley L. McCabe, Andrew C. McCabe, Chad J. Greenberg and
J. Peter McCann (“McCabe Group”);

7. William D. Bennett (“Bennett”);

8. William A. Hazel, Patrick Dowdall, James F. Livesey, Charles D. Subrt (“AEC Defendants”);

9. David B. Shefman and Marga R. Shefman, (the “Shefmans”);

10. Janet Dashiell (“Dashiell”);

11. Steven Allred (“Allred”);

12. Michael J. Rosen (“Rosen”); and

13. Wachovia Bank, N.A. (“Wachovia”).

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the above entitled action is hereby dismissed with prejudice as against the above identified Wave I Settling Defendants. Each party shall bear their own fees and costs.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that all members of the Settlement Class, defined as “All persons who were customers of 1031 Advance 132 LLC, 1031 Advance, Inc., 1031 TG Oak Harbor, LLC, AEC Exchange Company, LLC, Atlantic Exchange Company, Inc., Atlantic Exchange Company, LLC, Investment Exchange Group, LLC, National Exchange Accommodators LLC, National Exchange Services QI, Ltd., NRC 1031 LLC, Real Estate Exchange Services, Inc., Rutherford Investment, LLC, Security 1031 Services, LLC, Shamrock Holdings Group, LLC, and/or The 1031 Tax Group, LLC, including any subsidiaries or affiliates of any of those entities engaged in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031, and who suffered loss or damages or allegedly suffered loss or damages in any way, directly or indirectly, related to or arising out of (a) the failure of any of the entities listed above, including their subsidiaries or affiliates, (b) any of the events, acts or conduct alleged in the First Amended Complaint in the Action entitled Anita Hunter, et al. v. Edward Okun, et al., United States District Court for the Northern District of California, Case No. C 07-02795 JW, (c) any of the events, acts or conduct alleged in the Complaint in the Action entitled Quirk Infiniti, Inc. v. Wachovia Bank, N.A., United States District Court for the District of Massachusetts, Case No. 1:08-12060; or (d) any of the events, acts or conduct alleged in the Complaint in the Action entitled Anita Hunter, et al. v.

1 Citibank, N.A., et al., United States District Court for the Northern District of California, Case No.
2 C 09-02079 JW”¹, and all releasing Persons², as set forth in each of the Wave I Settlements (which
3 are incorporated herein by reference) and the Wave I Final Approval Order, are hereby permanently
4 barred and enjoined from instituting, commencing, or prosecuting any and all released claims, or
5 interests of any kind, as set forth in the Wave I Settlements, against the Wave I Settling Defendants
6 and any other persons released pursuant to the Wave I Settlements (“Other Released Persons”), and
7 the released claims shall thereupon be irrevocably compromised, settled, released, discharged and
8 dismissed on the merits and with prejudice by virtue of the proceedings herein.

9 IT IS HEREBY ORDERED ADJUDGED AND DECREED that, to the fullest extent
10 permitted by law, each of the non-settling defendants (“Non-Settling Defendants”), whether in this
11 action, the related action styled *Hunter, et al. v. Citibank, N.A., et al.*, Case No. 09-02079-JW, or any
12 other action filed on behalf of the Plaintiffs and the Class (collectively the “Class Action”), are
13 hereby permanently barred, enjoined and restrained from commencing, prosecuting, or asserting any
14 claim for indemnity or contribution against the Wave I Settling Defendants and their respective
15 Other Released Persons (or any other claim against the Wave I Settling Defendants or their
16 respective Other Released Persons where the injury to the Non-Settling Defendant is the Non-
17 Settling Defendant’s liability to the Plaintiffs), arising out of the claims or allegations asserted by the
18 Plaintiffs, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims,
19 or third-party claims, in the Class Action, in this Court, in the Bankruptcy Court,³ in any federal or

20 _____
21 ¹ The Settlement Class members’ assignees, if any, are also included in the above definition of the
Settlement Class.

22 ² “Person” means an individual, a corporation, a partnership, a joint venture, an association, a joint
23 stock company, a limited liability company, a limited liability partnership, an estate, an
24 unincorporated organization, a trust, a class or group of individuals, or any other entity or
25 organization, including any federal, state, or local governmental or quasi-governmental body or
political subdivision, department, agency, instrumentality thereof or any other legal entity that could
sue or be sued.

26 ³ The “Bankruptcy Court” means the Court presiding over the related bankruptcy proceedings
27 pending in the Southern District of New York, including the action styled In Re The 1031 Tax

1 state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the
2 United States, or elsewhere to the extent the Court has power or authority (collectively the “Barred
3 Claims of Non-Settling Defendants).

4 IT IS HEREBY ORDERED ADJUDGED AND DECREED that, to the fullest extent
5 permitted by law, the Wave I Settling Defendants are hereby permanently barred, enjoined and
6 restrained from commencing, prosecuting, or asserting any claim for indemnity or contribution
7 against any Person arising out of the claims or allegations asserted by the Plaintiffs, whether arising
8 under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, in
9 the Class Action, in this Court, in the Bankruptcy Court, in any federal or state court, or in any other
10 court, arbitration proceeding, administrative agency, or other forum in the United States, Canada or
11 elsewhere (collectively the “Barred Claims of Wave I Settling Defendants”); provided that nothing
12 herein shall preclude the Wave I Settling Defendants which are insurance companies from seeking
13 reimbursements of any amounts paid in settlement of such claims or allegations by the Plaintiffs
14 from their respective reinsurers, solely in their capacity as such.

15 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the recovery of the
16 Plaintiffs, if any, on their respective asserted and assertable claims against any Non-Settling
17 Defendants shall be reduced by the amount of the Wave I Settling Defendants’ equitable and
18 proportionate share of joint and several liability, as will be determined later by the Court in the
19 allocation of recoverable damages or costs incurred by the Plaintiffs.

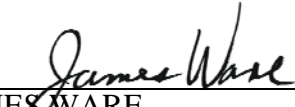
20 Without affecting the finality of this Judgment, this Court shall retain continuing jurisdiction
21 over the above-referenced action and the Wave I Settling Defendants for purposes of supervising,
22 administering, implementing, enforcing and interpreting the Judgment, the claims process to be
23 established and the distribution of funds to Settlement Class members, if any.

24
25
26 _____
27 Group, LLC, et al., Case No.07-11448 (MG), and certain related adversary proceedings.
28

1 THIS COURT FINDS that, pursuant to Federal Rule of Civil Procedure 54(b), there is no just reason
2 for the delay in entering this Judgment and Judgment is hereby entered.

3 IT IS SO ORDERED.

4
5 Dated: October 27, 2009



JAMES WARE
United States District Judge

United States District Court
For the Northern District of California

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: October 27, 2009

Richard W. Wieking, Clerk
By: /s/ JW Chambers
Elizabeth Garcia, Courtroom Deputy